

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

October 15, 2018

*approved
8 PM
11/19/2018*

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. by Chairman Frank Graziano. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

PRESENT: Gregory Tolve, Gary Marino, Theresa Duva, Suzanne Brown, Frank Graziano - Chairman, Diana Powell McGovern, Esq.

ABSENT: Peter Scirica

EXCUSED: Daniel Tolve, Joseph Battaglia, Thomas Da Costa Lobo

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No. 1: 47 Washington Avenue ADJOURNED

Applicant: Mr. Kurti, 47 Washington Avenue, Nutley, NJ 07110

Application: for a construction permit, at the above referenced premises, to add on the second floor an additional two (2) bedroom dwelling units to the existing non-conforming mixed use building, and to add a driveway and curb cut on the Hunt Street side, as shown on the survey prepared by John Evans, and plans prepared by Architect, Matt Evans, dated March 1, 2018.

Appearances: Mr. Donald Rinaldi, Esq., DiBiasi & Rinaldi LLC, 345 Centre Street, Nutley NJ 07110

Letter of Denial: was not read

Mr. Donald Rinaldi, Esq. requesting that this matter be carried to the next meeting as the architect is not available for this meeting.

With no further questions from the members and no one in the audience with questions or comments, a motion was made to carry this application to the next regularly scheduled meeting on November 19, 2018 @ 7:30. Mr. Donald Rinaldi, Esq. waived all time limits.

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No. 2: 390 Washington Avenue APPROVED 5-0

Applicant: Abundant Life Worship Centre

Application: to replace the existing, double sided 35 SF ground sign with display area on both sides, five (5') feet in height, and approximately two (2') feet from the front property line along Washington Avenue, and replace it with a new 57"x 79" 31 SF ground sign with display area on both sides for a total of 62 SF, with the height at 80'5" to the average grade, and to be installed approximately two (2') feet to the front property line along Washington Avenue, as shown on the plans prepared by, Paul Bauman, received by Code Enforcement on September 17, 2018

Appearances: Mr. Donald Rinaldi, DiBiasi & Rinaldi LLC, 345 Centre Street, Nutley NJ 07110 on behalf of the Applicant. Testimony presented by: Steve Clark 23-26 Central Avenue, Broothland, PA, Roberta Denetroulao 7 White Terrace, Nutley, Jeanne Cetrullo 30 White Terrace, Nutley, Paul Bauman (Applicant's planner and fact witness) 5 Norwood Terrace, North Caldwell, NJ, Delsye Holguin 371 Washington Ave, Nutley, and Ryan D'Auria 121 Rutgers Place.

Letter of Denial: was read by Mr. Gary Marino

AND the Code Official having denied said permit by letters dated October 1, 2018

The property is located in an M-O district as shown on the Nutley Zoning Map.

Chapter 700, Article XII, Section 700-84 A (2) of the Codes of Nutley states in an M-O zoning district ground signs cannot exceed five feet in height, which shall not be erected within five feet of any property line and which shall have a maximum display area not exceeding 25 square feet.

Chapter 700, Article XII, Section 700-84 B of the Codes of Nutley states the permitted total surface display area of business signs, including ground signs, shall be the number of square feet determined by the application of the formula set forth above, including the exception for a corner lot and the exception where premises abut a public parking lot. In no event shall the maximum display area for a premises exceed 150 square feet. The total surface display shall include both sides of a double-faced sign. ***The proposed double sided sign will be installed in the same footprint as the existing sign. The proposed size of the new sign will be 57"x 79" 31 SF display area on both sides for a total of 62 SF, with the height of the sign at 80.5" to the average grade, and will be installed approximately two (2') feet to the front property line along Washington Avenue.***

Diana Powell McGovern Esq. made notation an error was made and corrected in paragraph one and it should read, with the height at 80" not 80'.

Mr. Donald Rinaldi, Esq., made his opening remarks to the Board stating that the new ground sign will be replacing a current ground sign that is already existing. He explained the property is built with a slop from Washington Avenue and there is a base planter that the sign currently sits on, so it is straight and not slanted down the hill. Mr. Rinaldi stated again, they are only replacing the current sign and it will be a little larger. Mr. Rinaldi called his first witness, Steve Clark, who is the designer for the ground sign. Steve Clark, 2326 Central Avenue, Boothwyn, PA. Mr. Clark testified that he has some drawings to be reviewed. The Board members marked Exhibit A1, existing sign drawing and Exhibit A2, drawing of proposed sign. Mr. Rinaldi asked Mr. Clark what company he works for, how long he has been in this type of business and his position. Mr. Clark stated he works for KC Signs as a director of sales and has been doing this for 25 years. Mr. Clark confirmed that he designed the sign specific for 390 Washington Avenue and will place the sign at the site where it will be located. Mr. Rinaldi asked Mr. Clark to explain the mechanics of the sign. Mr. Clark stated on Exhibit A2, top portion on the sign is called a static, which means it does not change and holds one message and underneath that is the LED display where the message can be changed to show school time, service times, special affairs. He also stated it can be linked into the Federal Alert System to show severe weather, amber alerts, and any other emergencies. He stated the proposed sign is a much higher end model sign. He stated, it has automatic brightness, and will pick up the brightness to direct sunlight so there is no glare and he also stated on the flip side of that during night time it does not stay running at 80- 100% electric, it will come down to 5-7%. He also stated the operator has the ability to turn the brightness of the lights up or down. He stated it is customized, and you can program it, you can also schedule how the message changes, and when they change. Typically, you set for 3-5 message, 2 are normally school message and 2 current events that can be changed at will. Mr. Clark stated the engineering of the sign that was touched on earlier is that they are replacing the same structure that is there. Mr. Clark stated the existing sign sits on slope holes and the new sign will be sleeved to make it stronger. Mr. Clark refers to Exhibit A-1 top portion shows what is currently there and claims the new sign will not be a drastic size increase. He confirms it is taller by 1.5-2 feet, 6 inches of dead space because you need air circulations for the sign. Mr. Clark adds in terms of the height on the current sign and it being located on the slop, it takes your eyes off the road more now than if it was positioned correctly. Chairman Graziano addressed Mr. Clark and said that he stated previously the sign can be set to go on and off at certain times and be dimmed at certain hours. Mr. Clark stated as an automatic dimmer it is based on the sunlight. When it gets dark it does not need to be as bright. Chairman Graziano stated we have these type of signs at some of our schools now. Diana Powell McGovern, Esq. confirmed the Board approved these signs for the schools a few years ago and limited the hours to 6am – 11pm. She also stated there are conditions with other signs around town and they may very well be a condition for the proposed sign. Chairman Graziano asked if the Federal Alert System will be used and Mr. Clark confirmed that it will be tied into the current signage. Chairman Graziano asked if the sign was deactivated at 11:00pm, would the Amber Alert still be active and Mr. Clark confirmed that it would be.

Attorney McGovern asked with the brightness that the client is anticipating will it extend to the houses across the street and into the living room. Mr. Clark stated that the current signage is not good quality, the current light runs with a dimmer. He stated automatic settings is set to run at 12%. Attorney McGovern stated to be more clear what is the likely hood of this sign lightning and being bothersome to the houses in the area. Mr. Clark stated with the way the layout is, he did not see any problem or anyone would even notice it. Chairman Graziano asked if there is anyone from the public has any questions specifically for Mr. Clark and the signage.

Ms. Roberta Denetroulao- 7 White Terrace was concerned with the level of brightness and how it would affect her and her neighbor's property. The witness was asked what level of brightness will ensure that the sign lighting will not extend past the perimeter of the Abundant Life property. The question also was will the light extend past the borders of the property? Mr. Clark stated there may be a little confusion on the LED lighting. LED lighting is in 95% of any new signs. LED lighting on both top and bottom of the sign is the same. It's the same brightness if the LED lighting were in a 4x8 box. Chairman Graziano asked if the sign will be brighter than the current sign. Mr. Clark stated that it will not be. It has the capability to, but with the way Abundant Life is using the sign (for text), it will not be run greater than 20% of the actual lights. Diana Powell McGovern Esq. stated since you can't specify the method or dictate the speech, we can limit (if your concerned about other things other than words, like cartoons), the Board can add that as a conditions. She also stated if the Board agrees to the sign there can be a condition that it would need to be tested and approved by Code to ensure the light does not flow over the property lines of the Worship Center. There are a number of conditions that the board can consider.

Jean Cetrulo – 3 White Terrace, testified that her concern was if she was sitting on her deck in the back of her house, will they be hit with a bright light. Mr. Clark stated if you limit and there is no animation, no you will not. Mr. Rinaldi stated they have no problem with the building department testing the brightness. Mr. Rinaldi can guarantee it will not be as bright as the current sign. Attorney McGovern stated she knows from other cases that there is test called foot candles where the existing sign can be compared to the proposed sign to ensure that the proposed signed is not brighter than the existing sign. Mr. Clark stated that the existing sign is fluorescent bulbs and if you were to take that existing sign and strip it and put new lighting in it which is called retro fitting, it would be less bright. He stated it's not a matter of the brightness it's the harshness of the light, the fluorescent bulbs put out a harsh light and the LED are much more mellow. He also stated there is no ordinance on the type of lights allowed in signage and if they were to put fluorescent bulbs in the proposed sign it would be worse and brighter. LED are not that piercing. Mr. Marino stated his concern is if there are 4 or 5 messages the frequency of the changing in messages. He asked will it be 30 second or every minute. Mr. Clark stated the message can be limited to change. Mr. Marino asked what is the calculation to be used that will be least distracting? Mr. Clark answered 30-60 seconds. He also stated they are adjustable. Chairman Graziano asked Ms. Cetrulo if she can see the current sign now and is it too bright? Ms. Cetrulo answered it's not that it is bright, but it is just there. She also stated another concern she has is the way this

sign is designed and that it will make the residential area look more like a strip mall. Another concern she stated is that the sign is too high. Chairman Graziano confirmed it will be about 18 inches higher.

Ms. Delsye Holguin 371 Washington Avenue, testified and asked why does the sign have to be that high and why do you have to change it. She stated this is a nonprofit organization and why can't message be sent with text message. Chairman Graziano advised Ms. Holguin that is a general statement, not a question for the designer of the sign and that statement can be brought up at the end of the meeting. Attorney McGovern asked is the height of the sign is necessary in order for this mechanism to work? Mr. Clark stated the way the ordinance is written does not make sense, because it factors in the height of the sign but it does not factor in the grade of the property, so it could fall within the ordinance if we move the sign up. Example: If you take the sign where there is no grade in the property, the sign could be just as high if not higher. Mr. Rinaldi stated the sign is not near anyone's house to make a difference and then calls Mr. Bauman to the stand.

Paul Bauman, 5 Norwood Terrace, N. Caldwell is testifying as the planner and fact witness for the Church this evening. Mr. Bauman stated he would appreciate knowing where the neighbors live vs the Church property, because he wants to make sure all issues can be addressed that they have. Attorney McGovern advised 30 White terrace is across the street from the property and the Washington Ave property is directly across from the Worship Center. Mr. Bauman stated he can ensure as the fact witness that the church does not have any intentions on making things less enjoyable for anybody property. He stated they will be glad to control the brightness of the illuminations once its installed. He stated the purpose of doing this type of sign is because the way the church and school are located, people don't realize they are facing the same entity because there are currently two separate signs and sometimes you see one and not the other. He stated a number of people have complained because there is no prominent ID on the building as there was when ITT was there and they have passed their building and had to do a U-Turn and come back. Mr. Baumann stated their purpose on doing this sign is to consolidate the information that people need to know are where they are, and those people don't have to do U-turns to come back to their property. They are trying to improve safety for the whole, they are not trying to do detriment to the neighbors. He stated some of the neighbors have benefited from the worship centers courtesy's where they have called about trees and things that bothered them and they have always responded and they plan on keeping that open door. He stated they are trying to improve the accessibility and visibility of what Abundant Life is there for. Mr. Baumann stated if the Board needs any more facts he will be glad to provide them. Attorney McGovern asked Mr. Baumann to continue with planning information. Mr. Baumann advised that the board can evaluate on a C-2 variance condition. He stated the benefits as we heard from Mr. Clark and he stated as a fact witness they are trying to improve safety in the areas. They don't want people to pass them and do U-Turns. He stated he does not want any unnecessary hazard. Mr. Baumann stated the physical sign that is being proposed is to provide more information in less area. He stated it will be more functional and with less distraction. He mentioned other signs in the town at the

other schools and their intentions are to provide information and not to make it flashy as though they are a commercial enterprise. Mr. Baumann stated they want to suite the public that needs their service, make it easy to find them and give the public an opportunity to stop in and get to know Abundant Life. Mr. Baumann stated by giving the approval it will eliminate the one sign that is prominent and closest to the street. He stated the new sign will consolidate Church and School into one sign, it will be less wide but slightly taller, and they believe that having it elevated it will compensate for the fact that they have a slopping property from the front going to the rear and that will help keep the height difference to the minimum. He stated if they were to comply with current code he would have to push the sign back 3 ft. from where it is located, and they would have to increase the way the ordinance calculates height to maintain that line of sight. Mr. Baumann stated he believes that their purpose is benefits to the neighborhood and as far as detriments, he does not see any. He stated they are willing to adjust lighting and comply with municipality and state code. Mr. Mr. Baumann asked the Board for consideration. Attorney McGovern stated to Mr. Baumann that looking at the ordinance, (which has not been sited), under 700-80 Section C, the ordinance states no signs shall be lighted by means of flashing or interment illuminations. Mr. Baumann stated the proposed sign will not be any different than any of our current schools signs. Attorney McGovern stated the ordinance prescribes how much they can illuminate under Section E. Attorney McGovern stated the ordinance is written on how bright the sign can be. Mr. Baumann stated whichever ordinance is most stringent they will comply with. Chairman Graziano stated they are looking at limiting the hours of illuminations. Mr. Baumann stated that the present sign is lite from dusk till dawn, but they would be willing to put a cap on the proposed sign. Mr. Baumann stated they do have outside events and the participants do not return back to the property until midnight and he asked on those instances he would like some courtesy if they can use their best judgement to keep it illuminated. He stated its been on a timer for 22 years, and it has always been that way. Chairman Graziano pointed out that the present sign is lit at one level and the proposed sign will be changing and flashing. Attorney McGovern confirmed that the current signs in town by ordinance should not be lit beyond 10:00pm. Mr. Rinaldi asked if they can make a suggestion that the top of the sign be left on later but the message sign be shut down earlier. Chairman Graziano agreed that is reasonable. Attorney McGovern stated if the application should be granted there would be a condition that the top part of the sign to turn off at a certain time and the bottom to shut off at another time. The Board would need to consider what they want. Chairman Graziano also confirmed they would need to keep it under or no more than 75 foot candles. Mr. Rinaldi questioned Mr. Baumann as to what is the normal time they shut off their internal lights and Mr. Baumann answered 11:00pm. Mr. Rinaldi stated in concern to the neighbors what time can the content sign be shut off and Mr. Baumann answered that can be shut off within reason at 10 or 11 o'clock as long as the top sign can stay lit. Current sign is from dusk till dawn. Chairman Graziano stated there will not be any animations on this sign and asked if they will see Christmas Decorations and Mr. Baumann stated no, they don't have it now. Mr. Marino stated his concern that he does not want people to see an outside television. Mr. Baumann stated they do not intend to do that. Chairman Graziano stated he thinks they need to limit how many times it can

change messages. He does not want the sign to change every 30 seconds. Mr. Baumann asked what the schools are approved for and they will follow that and Attorney McGovern stated they have one message that goes on a dusk and shuts off at 10:00pm. Mr. Baumann disagreed. Chairman Graziano stated he lives and drives by Lincoln School every day and has never seen that change. Mr. Baumann stated he had driven by the Junior High School – and Chairman Graziano corrected him and stated they do not have a sign there. Mr. Baumann then stated number 7 school and Chairman Graziano corrected him that is a Belleville School and Mr. Baumann then stated the school across the street from Dunkin Donuts, which was confirmed as Washington School. Chairman Graziano confirmed that is a commercial zone area. Attorney McGovern confirmed Lincoln School is the only sign that is in a residential zone and that sign does not change. Chairman Graziano stated in this case there needs to be conditions being this is in a residential zone. He also stated he does not want to see this sign change every 30 seconds. Mr. Baumann stated it does not need to change every 30 seconds but to remember there is the school and then the Academy and the Church, so their needs to be for some allowance in the changing of messages and stated you can't restrict the freedom of speech. Chairman Graziano answered that we are not restricting the freedom of speech, but they are limiting how many times it will change. Chairman Graziano asks what is your plan and what are you suggesting. Attorney McGovern asked what are you looking to do, so we can understand. Mr. Baumann stated he is not sure of how frequently the materials need to change, he has not studied that and he would have to depend on Mr. Clark's experience. Mr. Baumann stated he certainly wants to respect the neighbors. Attorney McGovern asked isn't the message going to be for both things at the same time. Attorney McGovern asked if messages are going to share the screen. Mr. Baumann stated no. Attorney McGovern asked what is the timing which would respect the neighbors but also get the message across. Mr. Rinaldi stated that you would not notice the changing of the sign. He stated the changing messages will not be flashy. He stated that it will be so dim and then asked for Mr. Clark to come back to the microphone and explain. Chairman Graziano asked you will not notice the changing of the sign? Mr. Clark stated the lights dim out in a faded way that will not be noticed. Chairman Graziano asked Mr. Clark how often he felt the message needed to change. Mr. Clark said he would recommend 5-10 minutes. Chairman Graziano asked how many messages need to be out there. Mr. Baumann stated there may be a week that it does not have to change at all, but when there are special events it would change more. He stated more changes would occur for the Academy when they have travel basketball game or a gym night for the youth service. He stated he wants that publicized because that is an evangelistic opportunity for kids in the neighborhood. Attorney McGovern stated her concern is the ordinance 700-80 lighting and illuminations – Sections C reads no sign shall be lighting by means of flashing by interment and illumination. The less time in between changes creates interment and illumination, which is not permitted. Attorney McGovern stated the Board gets to interpret this ordinance and if they feel there is too much of a change, then that invokes this prohibition under the ordinance. Attorney McGovern stated the Board needs a time limited suggested so they are not in violations. Mr. Clark stated the compromise in the past from sun up until 5-6pm every 30 seconds and at night time 30minutes to 1 hour per message.

Chairman Graziano asks what the Board feels about this? Ms. Brown stated during the day 1-2 minutes. Chairman Graziano stated 5 minutes during the day and 1 hour after sun down. Mr. Marino stated to Mr. Baumann to answer his question on why we didn't put restriction on the school signs is because the message board at the school are the Chevrolet of message boards and Abundant Life is getting a state of the art Ferrari message board. So he stated its necessary to hash it out here and put restrictions on it now or in two years somebody's going to get in that Ferrari and drive it, so that is why the Board is concerned. Mr. Clark returned to the microphone regarding the neighbors that are present with questions and stated the White Terrace Road property is lined with Evergreen trees and that the other two house are 14 houses away from the subject property. Attorney McGovern stated the Board is familiar where each of the houses the neighbors reside in and you can see the sign from their location. Attorney McGovern stated the neighbor testified they can see it. Mr. Rinaldi stated there was a line of Evergreens put up for this reason. Attorney McGovern again stated the school signs are one message that is just there. Chairman Graziano stated the proposed sign is something they need to decide and live with. He stated he likes the idea of the sign, but they need to ensure it is the right thing and not like a highway sign. Mr. Rinaldi stated that the new sign will be a lot dimmer than the current bright white light sign. Mr. Baumann asks if the Board can give some allowance in changing of time to see if there are any problems in the sign once operating. Attorney McGovern said you cannot give a conditional condition. Mr. Baumann stated that he wants to be fair to the neighbors and also his operation and that they invested a lot of money in this sign. Attorney McGovern restated the conditions the board was considering which were that the top of the sign can be lit all night long and the bottom message sign would be regulated to text only. She stated during the day the message can change as often as every 5 minutes and in the evening every hour. She also stated church and school can divide up the message if they need to have a more constant message and if in 1 year you notice you need a change you can make an application with notice to the neighbors and explain for relief from a condition. Mr. Baumann stated he has no problem with that and that is fair. Mr. Graziano asked if there are any other statements or questions from the Board. Ms. Brown wants to reconfirm that there will be no animation on the sign. Attorney McGovern stated that a condition would include that it will be limited to text only no pictures or animations. Attorney McGovern states the conditions that the Board are imposing are the top sign with the name only can be lite all day, dusk 'til dawn. The bottom of the sign must go off by 10pm, the brightness of the sign to be limited to no more than 75 foot candles as per our code 700-80E, text only no pictures or animations. The message sign during the day can change no more than once every 5 minutes and after sundown the message can change no more than once per hour. The Board agrees the bottom part (Text) sign can start up at 6am. Chairman Graziano asks if the board has anything else or if there are any other witness. Chairman Graziano asks if the neighbors have any other questions and statements.

Ms. Cetrulo returned to the stand and stated the trees that line her property are very thin and not healthy and because of the empty space she can see the sign. She also stated she heard that PSE&G will be cutting those trees because of the wires. Ms.

Cetrulo stated that this is her explanation as to why she can see the sign. She also stated if the sign is not going to be any larger and brighter with no animation she has no problem with the sign. Ms. Delsye Holguin returned to the stand and stated the problem she has is she can see the sign from her window. She doesn't understand why they are stating people can't see the current sign. She said maybe if they take the flowers down from around the current sign people can see it better. She wants to know why they have to put text messages on the sign. She stated her granddaughter receives texts from the public schools through the internet. Ms. Holguin stated we pay taxes, and this is not a commercial area and this is a nonprofit. She stated they should be grateful that they allow that church with 700 kids. She stated she can't get out of her driveway because all of the events. Attorney McGovern explained while the children that go to that school receive text message for school closing, the point of the sign is they have a lot of other events where they need the sign to alert people and guest that are coming. Attorney McGovern also reminded Ms. Holguin that is what this testimony is about. Ms. Holguin stated they have a large parking lot inside; she doesn't think people are passing the property. Chairman Graziano stated to Ms. Holguin they can't do anything about parking. Ms. Holguin stated she said that because they are stating for safety. She thinks the current sign is enough, they don't need a new sign. Chairman Graziano advised Ms. Holguin that the current sign is lit all night and the new sign will shut down expect for the small top part with the church name. Ms. Holguin stated they also have the lights on the roof, like a commercial property. Chairman Graziano stated he doesn't know about the lights on the roof and you would need to contact the Building Department for that and she would need to contact the Police Department about parking. He stated that tonight they are here about the proposed sign. Chairman Graziano stated that the Board tried their best tonight to make it acceptable for everyone. Ms. Holguin still stated she doesn't understand why it can't be steady, she said it's like commercial and she pays 14,000 a year for taxes. Ms. Holguin said thank you and left the stand. Chairman Graziano asks if anyone else had any questions.

Dr. Pat D'Auria 121 Rutgers Place, testified and asked the Board about the changing of the sign until 6:00pm and if that is going to be illuminated or will it be dimmed at 4:30 in the winter. He stated he is concerned about the kids walking across the street and that being a distraction to the eye. Mr. Rinaldi stated it will be at a certain illumination at all times. Chairman Graziano & Attorney McGovern stated they will not be able to exceed the allowable code required 75-foot candle. Mr. Clark stated the automatic brightness is based on the actual sunlight and adjusts accordingly.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Mr. Gary Marino, seconded by Mr. Gregory Tolve. The variance was granted by a vote of 5-0.

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No. 3: 451 Chestnut Street APPROVED 5-0

Applicant: Mr. & Mrs. Grillo, 415 Chestnut Street, Nutley, NJ 07110

Application: , to install a six (6') foot solid type fence in the side yard along the driveway of Radcliff School, and **to leave as erected** a radon fan located in the south side yard which is 2.64', which was installed by the previous owner after the township issued the Zoning Certificate for a transfer of real estate, as shown on the survey prepared by George Anderson, dated March 13, 2018,

Appearances: Mr. & Mrs. Grillo

Letter of Denial: was previously read

Diana Powell McGovern Esq. advised applicants they are under oath from last meeting and also reminded the Board that this matter was heard in part at a previous meeting regarding a solid fence and radon fan that was on the left side of the yard. A Board Member not present at this meeting suggested to receive the variance to possibly remove the fan inside and mount it on the wall. Applicant agreed she would look into that possibility.

Mrs. Grillo explained today that she did speak to the radon company and they have advised them that the radon fan needs to remain outside. Mrs. Grillo also stated for the record, that this was put in prior to them purchasing the property. Mrs. Grillo stated she would like to keep the fan on the side of the property for safety reason as she has a small back yard, children and a dog. She feels with those factors including the electricity leaving the radon fan on the left side of the property would be a less hazard to her and her family.

Letter of Denial: re-read by Diana Powell McGovern, Esq.

Your request for a fence permit, at the above referenced premises, to install a six (6') foot solid type fence in the side yard along the driveway of Radcliff School, and **to leave as erected** a radon fan located in the south side yard which is 2.64', which was installed by the previous owner after the township issued the Zoning Certificate for a transfer of real estate, as shown on the survey prepared by George Anderson, dated March 13, 2018, is denied for the following reasons.

This property is located in an R-1 district as shown on the Nutley Zoning Map.

Chapter 700, Article III, Section 700-3 of the Codes of Nutley entitled "Definitions" of a **SIDE YARD** is an open unobstructed space between the building and the side line of the lot extending through from the front to the rear yard or to another street, into which

space there is no extension of the building above the grade level. The radon fan is located in south side yard which is 2.64'. The required side yard is six (6') feet to the face of the unit.

Chairman Graziano, stated the radon fan is almost at 3' ft. from the side yard and already seems to be close to the back of the house. Chairman Graziano stated that he also understands that once radon is disbursed into the atmosphere it dissipates and its gone. The Board agrees the benefit of having the radon fan in terms of health and safety for the property owners out ways the encroachment on the side yard.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Ms. Suzanne Brown, seconded by Mr. Gregory Tolve. The variance was granted by a vote of 5-0.

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No. 4: 442 Harrison Street APPROVED 5-0

Applicant: Mr. Russell D'Angelo, 442 Harrison Street, Nutley, NJ 07110 Block & Lot 8202/16

Application: To request for permission, at the above referenced premises, to **leave as erected** a six (6') foot solid type fence which was installed in the east side yard, as shown on the property survey prepared by Morgan Engineering & Surveying, dated April 19, 2017.

Appearances: Mr. & Mrs. Russell D'Angelo

Letter of Denial: was read by Mr. Gary Marino

This property is located in an R-1 district as shown on the Nutley Zoning Map.

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley states a fence erected along the side lines from the front line of a main structure to the rear line of such structure and within such lines shall not exceed four feet in height and shall be not less than two feet in height and shall be of 50% open construction (i.e., the open spaces in the fence shall be at least the same width of each picket, slat or other construction element of such fence). The setback for any such fence shall be in line with the furthest setback of the adjacent property or the property upon which the fence is being erected, whichever setback is greater.

Mr. & Mrs. D'Angelo both testify that they moved in the house 15 months ago. Mr. D'Angelo stated he only replaced the fence that was already there. Mr. D'Angelo stated he received a letter in the mail that he did not get a permit. He stated he spoke to the building guy who gave him instructions on what to do and that he never said he wasn't allowed to have this fence. A couple of weeks later he stated the lady in the office called and advised him that he needed to take the fence down because he was in violation. Mr. D'Angelo asked why was he not advised of this when he received the letter in the mail and she stated the lady said she could not answer that. Mr. D'Angelo appeared in court

and received a \$50.00 fine for not getting a permit. Mr. D'Angelo stated he did not know to replace something existing that he needed a permit, but stated he is aware now. Mr. D'Angelo stated his side yard is bigger than the back yard and if this fence was not there, it would completely open up to the neighbor's yard. Mr. D'Angelo stated he is just looking for some privacy. Mr. D'Angelo confirmed neighbors consented to the fence. The Board members marked Exhibit A1.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Ms. Brown, seconded by Mr. Gary Marino. The variance was granted by a vote of 5-0.

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No. 5: 3 Witherspoon APPROVED 5-0

Applicant: Mr. & Mrs. Pasquale Conturso, 3 Witherspoon Street, Block & Lot 9403/18

Application: To construct a new roof canopy over the front steps with a 20'11" front yard setback to the main dwelling, as shown on the site plan submitted and survey prepared by Joseph Mele, dated March 27, 2013, and the plan submitted by the homeowner, dated May 15,

Appearances: Pasqual Conturso – son

Letter of Denial: was read by Mr. Gary Marino

This property is located in an R-2 district as shown on the Nutley Zoning Map.

Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley states by any terrace or porch having its floor level no higher than the floor level of the first story of the building and having no railing or other member higher than three feet above floor level: six feet. The **required** front yard setback in an R-2 district is 25'. ***The front yard setback is 20'11"; the setback to the canopy roof is 15'.***

Pasqual Conturso, son of Mr. & Mrs. Conturso is testifying on behalf of his parents who were also present because that makes them more comfortable. Pasqual testified that his parents want to put a roof over the front door because they do not want to shovel the snow anymore being they are getting older and their children are no longer in the same town to help them. Pasqual states they will not be protruding any further than the porch is already. They are looking to remove the railings put some columns and put the railings back. Mr. Graziano asked if there will be new railings and Pasqual stated that the old railings will go back once completed.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Mr. Gary Marino, seconded by Mr. Gregory Tolve. The variance was granted by a vote of 5-0.

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No. 6: 246 Rutgers Place APPROVED 4-0

Applicant: Mr. Anthony Potin, 246 Rutgers Place, Nutley, NJ 07110 Block/Lot 1802/25

Application: *To leave as erected* two (2) AC condensers located in side yard on the right side of the dwelling, having approximately 5'6" side yard setback, as shown on the survey prepared by MPF Land Surveying, dated June 4, 2018

Appearances: Mr. Anthony Potin & Mrs. Guzman

Letter of Denial: was read by Mr. Gary Marino

This property is located in an R-1AA district as shown on the Nutley Zoning Map.

Chapter 700, Article III, Section 700-3 B of the Codes of Nutley entitled "Definitions"; Side Yard is an open unobstructed space between the building and the side line of the lot extending through from the front to the rear yard or to another street, into which space there is no extension of the building above the grade level. ***The condenser will be located in side yard on the right side of the dwelling, having approximately 5'6" side yard setback. The required side yard in an R-1AA is eight (8') feet and 10' for the side yard in questions.***

Diana Powell McGovern, Esq. stated Ms. Duva will be recusing herself being she is in 200-foot radius of the subject property. Ms. Duva stepped away from the proceeding.

Mr. Anthony Potin & Mrs. Guzman both testify that the condenser was put on the right side of the house because that is the only place the contractor told them it could be. It could not be put on the left side because of the structure of the house. He also stated it could not go in the back because of the garage door and stairs that go to the back door. They have another small space but there is a window and a gas pipe there. The only place that was left is where it was placed.

Mr. Graziano asked, there is no way to put it on the other side and Ms. Suzanne Brown asked if it can be seen from the street. Mr. Potin stated no to both questions.

Ms. Susanne Brown asked since it is on the side of the house was there indeed 5' of passing space. Mr. Potin stated yes. Ms. Suzanne Brown confirmed that it was on the neighbor's driveway side, so it was not bothering them.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Ms. Brown, seconded by Mr. Mr. Gary Marino. The variance was granted by a vote of 4-0.

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RESOLUTIONS MEMORIALIZED: 46 Mt. Vernon Street Block & Lot 7905/22,
43 Jackson Street Block & Lot 501/11, 451 Chestnut Street Block & Lot 5603/10,
39 Wilson Street Block & Lot 8401/17, 109 Walnut Street Block & Lot 6602/16

MINUTES: None.

INVOICES: 126 Washington Avenue Invoice approved to Pennoni in the amount of \$480.00. 551 Centre Street Invoice approved to Pennoni in the amount of \$765.00, Ralphs Pizzeria Parking, review of Site Plan Invoice was approved to Pennoni \$170.00.

NEW BUSINESS: None

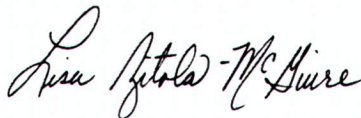
LITIGATED MATTERS: None

NOTE: THE PROCEEDINGS IN THIS MATTER WERE VOICE RECORDED. THE RECITAL OF FACTS IN THE MINUTES IS NOT INTENDED TO BE ALL-INCLUSIVE, BUT IS A SUMMARY AND HIGHLIGHT OF THE COMPLETE RECORD MADE BEFORE THE ZONING BOARD.

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Respectfully submitted,

Lisa Zitola-McGuire



Minutes Approved